

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

**FILED**  
JAN 09 2008  
U.S. DISTRICT COURT  
WHEELING, WV 26003

IN RE:

HOWARD DELIVERY SERVICE, INC.,

BK No. 02-30289

Debtor,

HOWARD DELIVERY SERVICE, INC.,

Plaintiff,

v.

Civil Action No. 3:03CV61  
(Frederick P. Stamp, Jr.)

ZURICH AMERICAN INSURANCE COMPANY,

Defendant.

**ORDER ALLOWING ADDITIONAL PRIORITY CLAIM AND DIRECTING  
DISTRIBUTION TO WAGE PRIORITY CLAIMANTS\***

This day the Court considered the Debtor's Motion for an Order Authorizing Disbursing Agent to Pay Holders of Priority Claims for Unpaid Wages and Vacation Pay **[Doc 686 in the Bankruptcy Court; Doc 46 in the District Court]**. On December 10, 2007, the Clerk of the Bankruptcy Court issued a Notice of Debtor's Motion for an Order Authorizing Disbursing Agent to Pay Holders of Priority Claims for Unpaid Wages and Vacation Pay **[Doc 688 in the Bankruptcy Court]** (the "Notice"), and caused a copy of the Notice to be mailed to all creditors and parties in interest. One Response to the Debtor's Motion, by Donald J. Hermann, Jr., was filed with the Clerk of the Court **[Doc 699]**. Counsel for the Debtor reported to the Court that no objections to the relief requested in the Debtor's Motion had been filed with the Court or served upon him, that he knew of no objections to the relief requested in

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\*This bankruptcy case was filed in the United States Bankruptcy Court for the Northern District of West Virginia. By Order Withdrawing Reference, entered November 20, 2006, reference was withdrawn by the United States District Court for the Northern District of West Virginia. Per Order Establishing Procedure For Future Filings And Outlining Remaining Matters, entered December 13, 2006, this Motion was filed in the office of the Clerk of the United States Bankruptcy Court for the Northern District of West Virginia.

the Debtor's Motion, and that the time allowed for written objections to be filed as set out in the Court's Notice mailed to all creditors and parties-in-interest had expired.

Counsel for the Debtor reported to the Court that Donald J. Hermann, Jr. had telephoned him, inquired regarding his timely filed Proof of Claim **[Claim No. 140]** and asked that it be accorded the priority that it deserved. Upon review of Mr. Hermann's Proof of Claim, it appears that he inadvertently entered \$0 as to the amount of his claim entitled to priority, when in fact he was entitled to priority under § 507(a)(4)<sup>1</sup> of the Bankruptcy Code in the amount of \$832.50, for vacation pay accrued during the ninety-day period prior to the filing of the Petition that commenced this case. All of this comports with the Response filed by Mr. Hermann. Upon the Response filed by Mr. Hermann and the representations of counsel for the Debtor, the Court finds that the claim of Donald J. Hermann, Jr. for unpaid vacation pay in the amount of \$832.50 is entitled to priority under § 507(a)(4) of the Bankruptcy Code, and the Court does so ORDER.

Upon the representations of counsel for the Debtor, upon the Debtor's Motion and the Exhibits attached thereto, there being no objections to the relief requested in the Debtor's Motion and the time allowed for such objections having expired, and it appearing to the Court that the distribution proposed to be made to wage priority claimants pursuant to the Confirmed Plan of Reorganization in this case being entirely appropriate and consistent with the terms of the Confirmed Plan of Reorganization, the Court finds that all creditors and parties-in-interest have been given sufficient notice of the distribution proposed to be made by the Disbursing Agent to wage priority claimants, and it is hereby ORDERED that the Disbursing Agent appointed pursuant to the Second Amended Chapter 11 Plan of Reorganization confirmed in this case by Order entered March 7, 2003 **[Doc 347]** (the "Confirmed Plan") is authorized and directed to cause distributions to be made to the claimants who are entitled to priority under § 507(a)(4) of

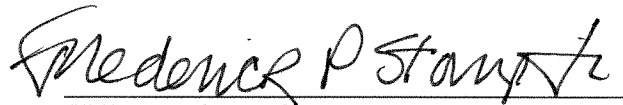
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<sup>1</sup> Howard Delivery Service, Inc. filed its petition for relief under Chapter 11 of the Bankruptcy Code on January 30, 2002. At that time, the sub-section of the Bankruptcy Code granting priority to claims for unpaid wages, vacation pay, sick pay and other forms of compensation was § 507(a)(3). By virtue of amendments to the Bankruptcy Code effective October 17, 2005 (the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)), the pertinent sub-section was renumbered as § 507(a)(4). Throughout this Motion, the sub-section of the Bankruptcy Code granting priority to holders of claims for unpaid wages, vacation pay, sick pay and other forms of compensation is referred to by its current designation, that is, § 507(a)(4).

the Bankruptcy Code in the total amount of \$31,872.22, being the persons and in the amounts listed on Schedule A attached to and made a part of this Order. The Disbursing Agent is directed to cause these distributions to be made by checks drawn upon the Debtor's operating account, and to forward such checks to the wage priority claimants listed on Schedule A attached to this Order not later than ten (10) business days after the entry of this Order.

It is so ORDERED.

ENTER: January 9, 2008.



FREDERICK P. STAMP, JR.  
United States District Judge

Prepared by:

/s/ Richard M. Francis  
Richard M. Francis (W. Va. State Bar No. 1275)  
Kristin A. Shaffer (W. Va. State Bar No. 10338)  
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Counsel for the Debtor, Howard Delivery Service, Inc.

**SCHEDULE A**

**HOWARD DELIVERY SERVICE, INC.**

**CASE NO. 02-30289**

**CHAPTER 11**

**U.S. BANKRUPTCY COURT, NORTHERN DISTRICT OF WEST VIRGINIA**

**507 (A) (4) PRIORITY CLAIMS**

<b>Claim #</b>	<b>Claimant</b>	<b>Priority Claimed</b>	<b>Priorty Allowed</b>
52	Roy Hamblin	\$384.00	\$384.00
53	Christopher L. Daley	\$1,463.18	\$1,463.18
54	Mark G. Dudley	\$1,463.18	\$1,463.18
112	Gary Ewer	\$360.00	\$360.00
115	Clifford T. Jenkins	\$3,012.30	\$832.50
118	Larry Dansingburg	\$360.00	\$360.00
119	James A. Castalde	\$900.00	\$900.00
127	James A. Tolen	\$808.65	\$808.65
135	Jonathan C. Cwik	\$2,569.50	\$1,165.50
136	James Prusinski	\$1,093.00	\$1,093.00
137	Larry J. Ezerkis	\$720.00	\$720.00
140	Donald J. Hermann	\$0.00	\$832.50
144	Mark A. Wojtulewicz	\$4,730.00	\$832.50
146	Jeffrey M. Franklin	\$2,880.00	\$832.50
147	Mitchell Schroka	\$1,617.30	\$1,165.50
148	Harold R. Wolford	\$2,797.49	\$129.50
149	David A. Briggs	\$1,731.00	\$1,295.50

<b>Claim #</b>	<b>Claimant</b>	<b>Priority Claimed</b>	<b>Priority Allowed</b>
150	Dale A. Kolter	\$3,072.87	\$832.50
156	David A. Krivitz	\$6,874.26	\$832.50
159	Donald L. Zeit	\$2,792.00	\$1,165.50
160	Patrick Belezak	\$360.00	\$360.00
161	Gregory M. Soens	\$3,780.00	\$1,165.50
167	William C. Wright, Jr.	\$1,365.62	\$1,365.62
169	Eddie W. Smith	\$1,513.50	\$832.50
170	James Preston	\$1,440.00	\$832.50
171	Steve Focareto	\$413.00	\$413.00
174	John E. O'Connell	\$1,020.78	\$1,020.78
176	Donald Hatak	\$5,267.08	\$832.50
177	Gary Neahrng	\$1,617.30	\$1,617.30
178	David Younger	\$495.01	\$495.01
180	David Franzen	\$900.00	\$900.00
181	Carlton C. Smith	\$786.15	\$786.15
182	John Flasz	\$463.00	\$463.00
183	Ronald Ralston	\$3,718.30	\$1,165.50
184	William Becker	\$1,065.10	\$1,065.10
186	Johnny Sowards	\$4,650.00	\$4,650.00
200	Kendall R. Smith	\$1,043.00	\$1,043.00
		<b>TOTAL</b>	<b>\$31,872.22</b>